vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1204 OF 2005
IN
SUIT NO.4434 OF 1999

Lalit Kumar Champalal Jain ... Plaintiff
V/s.
H.M.P. Engineers Ltd. ... Defendants
And
Runwal Constructions ... Respondent

Mr.S.Bangur i/b A.V. Jain for Plaintiff
Ms.Sowmya Srikrishna i/b Kanga & co. for Defendants

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 28, 2005**

P.C.:

. The Chamber Summons has been taken out by the plaintiff seeking to add M/s.Runwal Constructions as party defendant to the suit. The suit has been filed against the defendants on account of the monies paid by the defendants for the goods sold and delivered by the plaintiff. It appears that some proceedings were instituted against the defendants before the Debt Recovery Tribunal, Kolkata. The Debt Recovery Tribunal, Kolkata directed the sale of certain properties by auction pursuant to the orders dated September 3, 2004 in case No.TA/7/2004 in the matter of Indian Bank v/s. M/s.Blue Moon Engineers Ltd. & Others. It appears that under this order, the applicant purchased the property from M/s.Blue Moon Engineers Ltd., which is now HMP

Engineers, the defendants. The order of confirmation of sale of the immovable properties issued by the Kolkata Debt Recovery Tribunal is annexed as Exhibit 2 to the affidavit of the auction purchaser. In this certificate, it has been mentioned that the property described in the schedule has been sold to M/s.Runwal Constructions, Chembur, Mumbai, the Respondent herein, for a sum of Rs.12 lacs and that it has been purchased alongwith workers' liability and the other existing liabilities of the owners of the said properties).

2. It is the case of the Plaintiff that the Respondent has purchased the property alongwith all other existing liabilities of the owners of the property and, therefore, the Respondent is a necessary and proper party to this Suit.

3. On the other hand, the learned Counsel for the Respondent submits that the stipulation contained in the certificate issued by the Debt Recovery Tribunal, Kolkata confirming the sale, "other liabilities of the owners of the said property" does not include all liabilities of the owners but only such liabilities which arise out of the liability of the property in question. She submits that these liabilities would include taxes and other outgoings in respect of the

property, and not the trading liabilities of the defendant. The auction purchaser cannot be liable for such dues. She, therefore, urges that the respondent is neither a necessary nor a proper party.

4. The contentious clause in the order confirming the sale of the immovable property reads as under:

> "M/s.Runwal Constructions has purchased the said property alongwith workers' liability and the other existing liabilities of the owners of the said properties".

5. In my view, the certificate of confirmation of sale issued by the Debt Recovery Tribunal, Kolkata is very clear and indicates that the respondent had purchased the property alongwith the workers' liability and the other existing liabilities of the owners of the said properties. The liability of the owners was not restricted only to the outgoings with respect to the property described in the schedule, but all other liabilities of the owners then existing. In my view therefore, the Chamber Summons is required to be allowed.

6. Hence, the Chamber Summons is allowed in terms

of prayer clauses (a) and (b). Amendments to be carried out within two weeks from today.